AL 2.1989-157

CHILD WELFARE IN PROGRESS

formation Guide to The Young Offenders Act

U N I T VII

Definitions and Principles
Pre Court Proceedings
Court Proceedings
Post Court Proceedings

Alberta
SOCIAL SERVICES

DDN 8708549

CANADIANA
APR 11 1989

ALBERTA SOCIAL SERVICES

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April 16, 1987

ACKNOWLEDGEMENTS

This manual is the result of input and written contributions from a broad range of Departmental staff. Protection Services is appreciative of the efforts of these individuals. Through their support and involvement, both the quality and relevance of this manual was greatly enhanced.

Protection Services would also like to thank the following staff of Alberta Social Services who have contributed to the writing and technical development of the Informational Guide on the Young Offender's Act:

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PREAMBLE

While working with children under the Child Welfare Act you will also come into contact with other legislation and government departments. In order to carry out your casework duties in the most effective manner, and achieve the best possible outcome for the children under your care, you will need to have a working knowledge of the sections of the legislation that may affect your role as a child welfare worker.

One act of particular importance is the Young Offenders Act. A number of children with child welfare status also have status under the Young Offenders Act. As a child welfare worker, you will have a specific role to play with children on your caseload who have this dual status. This role will vary, dependent upon the child's particular status under the two pieces of legislation.

This guide was developed to help you understand the sections of the Young Offenders Act that relate to your role. It also attempts to clarify Departmental expectations.

This document therefore will help you to develop a cooperative and effective working relationships with other professionals and the families under your care.

Helen Wentz
Executive Director
Protection Services

HOW TO USE THIS MODULE

This module is meant to provide you with a overview of your role in relation to the Young Offenders Act.

The overall objective of the module is to give you, the Child Welfare Worker, an information guide which answers some of the questions you may have when carrying out your duties under the Child Welfare Act. This will assist you in becoming a more effective child welfare worker.

The format of each module is:

1. A schematic of the series;

2. An outline of the information contained in the particular module;

3. Critical information highlighted (enclosed in boxes) in each section;

4. Questions, case studies and checklists that you can use to test yourself on the content of each section of the module; and

5. A reference list at the end of each section of the module.

THE INFORMATION GUIDE SERIES

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1. BACKGROUND INFORMATION
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3. MATTERS TO BE CONSIDERED
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1. PRELIMINARY INTERVENTIONS
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UNIT IV

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2. TEMPORARY GUARDIANSHIP
3. PERMANENT GUARDIANSHIP

UNIT V

1. CONFINEMENT OF AN APPREHENDED CHILD
2. SECURE TREATMENT CERTIFICATE
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UNIT VI

1. JOINT GUARDIANSHIP
2. PRIVATE GUARDIANSHIP
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UNIT VII

YOUNG OFFENDERS ACT

1. DEFINITIONS AND PRINCIPLES
2. PRE-COURT PROCEEDINGS
3. ROLE OF THE COURT
4. POST-COURT PROCEEDINGS

UNIT VII
THE YOUNG OFFENDERS ACT

The following four sections describe the parts of the Young Offenders Act that relate to the role of a child welfare worker.

Section 1

DEFINITIONS AND PRINCIPLES

This section describes the key definitions and principles upon which the Young Offenders Act is based.

Section 2

PRE COURT PROCEEDINGS

This section contains a description of the role of the police and the rights of "young persons"; and the options available at the point of apprehension, including detention and the Aternative Measures Program.

Section 3

COURT PROCEEDINGS

This section describes the events that can take place at the young person's first appearance in Court, the plea, release or detainment, pre-disposition report, the roles of court officials, and dispositions.

Section 4

POST COURT PROCEEDINGS

This section deals with review of sentence, appeals, probation, custody and assessment, treatment and completion of sentence.

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INTRODUCTION

On April 1, 1984 the Federal Solicitor General proclaimed a new piece of legislation, the Young Offenders Act, in order to deal with young persons who come in to conflict with the law.

This Act outlines how young persons will be dealt with by police and the court system, and what happens if they are found guilty of committing an offense against federal statutes. The Young Offenders Act replaces the Juvenile Delinquent Act passed in 1908.

Because the Federal Young Offenders Act only refers to offenses against federal statutes (eg. the Criminal Code), the Province of Alberta proclaimed a provincial Young Offenders Act on June 7, 1984. The provincial legislation deals with offenses against provincial statutes and municipal by-laws. This legislation defines matters such as the court in Alberta that is designated a "youth court" (this is the Provincial Court) and the penalties (usually fines) resulting from convictions against provincial statutes and municipal by-laws. Since federal legislation will have the greatest impact on the role of the child welfare worker and because the provincial legislation is bound by the parameters established through the federal act, the focus of this manual is on the federal Young Offenders Act.

As a child welfare worker you will be involved with children who, by circumstance or behavior, will come into contact with law enforcement authorities. Depending upon the status of each child under the Child Welfare Act your role and responsibilities in relation to the Young Offenders Act may vary. In instances where the Department has temporary or permanent guardianship, every reference in the Young Offenders Act which calls for parental involvement includes you as a representative of the Children's Guardian. In situations where the department has a non-guardianship service role, as is the case with

support and custody agreements, your role as a concerned professional will extend to any event or circumstance where the department can act in the best interest of the child and his or her family.

To help you fully understand your role and responsibilities in relation to the Young Offenders Act, this self-study guide will help you to become familiar with key sections of the legislation and their implications for you in your position as a child welfare worker. The guide will cover four areas: definitions and principles, pre-court proceedings, court proceedings, and post court proceedings. Further information should be obtained directly from the Act or through consulting references found at the end of each section of this guide.

In order to ensure that this material covers areas that are important to you as a child welfare worker, we polled a sample of workers. We asked them what were the ten questions asked most by child welfare workers in relation to the Young Offenders' Act. The results are listed below. Read the questions and see how many you can answer.

1. Are child welfare workers required to intervene when a child is being released from secure custody and may be a danger to himself/herself, or others? Answer: Page 46

2. Which takes precedence: the Young Offenders Act or the Child Welfare Act? Answer: Page 17

3. Which Act now deals with truancy: Child Welfare, Young Offenders or the School Act? Answer: Page 17

4. Can child welfare workers allow probation officers to view particular child welfare files? Answer: Page 39

5. Can a child welfare worker release information without consent, to: i) a Youth Court Judge, ii) Crown Counsel? Answer: Page 45

6. Can a child welfare worker be appointed as a probation officer under the Young Offenders Act? Answer: Page 45

7. Can a Native counsellor be appointed as a probation officer under the Child Welfare Act? Answer: Page 45

8. Can Child Welfare provide community youth workers for young offenders who are to be discharged from a Young Offender Custody Facility? Answer: Page 60

9. Must Child Welfare intervene in cases where a child is refusing to return home after being discharged from a Young Offender Custody Facility? Answer: Page 60

10. What is Child Welfare's responsibility for a young offender who is being released from the care of the Solicitor General and whose parents resides in another province? Answer: Page 60

SECTION I - DEFINITIONS AND PRINCIPLES

Section 2 of the Young Offenders Act (Definitions) and Section 3 (Declaration of Principle) are two key sections of the legislation because they establish the parameters by which the remaining sections of the act are interpreted.

Definitions

The first definition of importance to a child welfare worker is the term "young person". By knowing the definition of a "young person" under the legislation, you will be in a position to determine whether or not the Young Offenders Act applies to a specific child.

> "Young person" means a person who is or, in absence of evidence to the contrary, appears to be:
>
> a) twelve years of age or more, but
> b) under eighteen years of age . . .
>
> and where the context requires, includes any person who is charged under this Act with having committed an offense while he was a young person or is found guilty of an offense under this Act.
>
> Quoted from Section 2 Y.O.A.

Through this definition a youth who is eighteen years of age or over, but who committed an offense before his eighteenth birthday, can still be charged under the Young Offenders Act.

> ° age may be proved in a variety of means including:
> ° production of a birth certificate or other documentary evidence of age
> ° the testimony of a parent
> ° inferences from the young person's appearance or testimony.
>
> Summarization of Section 57 Y.O.A.

Another definition of importance to a child welfare worker is the term "parent". Under the Young Offenders Act a parent is:

> Any person who is under a legal duty to provide for that other person or, any person who has, in law or in fact, the custody or control of that other person . . .
>
> Quoted from Section 2 Y.O.A.

Many of the children under the care of Alberta Social Services fall within this definition. This includes children under: custody agreements, temporary guardianship orders or permanency guardianship orders and agreements. Therefore, if a child on your caseload who is in the custody of Alberta Social Services and is considered a "young person" under the Young Offenders Act, is charged with an offense under this act, you may be required to play the role of a parent. This would include rights such as: the right to receive court notices, and to attend court hearings. In other sections of this manual additional rights and obligations will be described.

This definition does not exclude the rights of the child's biological parents unless the child is under a permanent guardianship order or agreement. With the exception of permanent guardianship, the rights and obligations of child welfare workers and the child's biological parents will depend upon the status of the child and the decision making authority included in agreements between the biological parents and the Department. Whenever possible emphasis should be placed on involving the biological parents in decisions affecting their child under the Young Offenders Act.

A third term of importance to you is that of a "Provincial Director".

> a "provincial director" means a person, a group or class of persons, or a body appointed... to perform... any of the duties or functions of a provincial director under [the Young Offenders Act]
>
> Quoted from Section 2 Y.O.A.

In Alberta the Provincial Director of the Young Offenders Program is appointed by the Alberta Solicitor General's Department. Unless otherwise specified any

reference in the manual to the provincial director will refer to this position. The term provincial director is often confused with the term "a director" which refers to a director under the Child Welfare Act. A director under the Child Welfare Act has no authority under the Young Offenders Act.

Two other definitions of importance are predisposition reports and Youth Court. In Alberta the Youth Court is the Provincial Court. A predisposition report is:

> a report on the personal and family history and present environment of a young person . . .
>
> Quoted from Section 2 Y.O.A.

These reports are requested by a youth court judge and are presented after the youth's guilt has been determined but prior to sentencing.

Declaration of Principle

Section 3 of the Young Offenders Act outlines the principles upon which the legislation is based. In many instances the principles are not embodied in the act but contained in a Preamble to the legislation. When the principles are embodied in the act (as they are with both the Alberta Child Welfare Act and the Young Offenders Act) they become an integral part of the legislation and govern the interpretation of the act and practice. A Preamble on the other hand is more of a "policy" and doesn't necessarily govern an interpretation. Therefore, the "Declaration of Principle" in the Young Offenders Act must be reflected in court decisions and practice.

This declaration underlies the philosophy that society has a responsibility to take reasonable measures to prevent criminal conduct by young persons and that young persons have rights and freedoms, in their own right, including those stated in the Canadian Charter of Rights and Freedoms or in the Canadian Bill of Rights. Principles upon which the legislation is based are as follows:

DECLARATION OF PRINCIPLE

1. A young person who breaks the law will bear responsibility for his or her actions.

2. Young offenders will not always be held as responsible or suffer the same punishment as would adult offenders.

3. The public should be protected as needed from Criminal Acts by young people.

4. Young offenders need control and discipline, they also have special needs and require assistance.

5. Not taking a Young Offender to court but taking some other action or no action should be considered if the public will still be protected.

6. Young people have rights and freedoms which include those in the Canadian Charter of Rights & Freedoms and the right to participate and be heard when decisions are made about them.

7. Young people should have special guarantees of their rights and freedoms.

8. Young people have the right to be told about all their rights and freedoms in the criminal law system.

9. Young people have the right to the least possible interference with their freedom as long as the public is protected and the needs of young people and interests of their families are considered.

10. It is the responsibility of the parents to look after and guide their children and young people should not be taken away from parents unless absolutely necessary.

Summarized from Section 3(1) Y.O.A.

COMMONLY ASKED QUESTIONS

1. Which Act takes precedence - the Young Offenders Act or the Child Welfare Act?

Answer:

Precedence can be a very complicated issue. Generally a federal act will take precedence over provincial legislation (although there are other factors affecting this such as the intent and purpose of the two acts, the degree of specificity of the legislation, etc.).

One important area where the Young Offenders Act takes precedence over the Child Welfare Act is custody. When a young person receives a open or secure custody disposition under the Young Offenders Act this takes precedence over any custody related agreements or orders under the Child Welfare Act.

2. Which Act deals with truancy: Child Welfare, Young Offenders or the School Act?

Answer:

The School Act deals with truancy.

Exercise

The following are a few questions on the Young Offenders Act. See how well you do on them. The answers follow.

		True	False
1.	In some instances a child welfare worker may be required to testify, in youth court, as to a child's age.	_____	_____
2.	A child welfare worker is always considered a parent of a child under the Young Offenders Act, if the youth has child welfare status with Alberta Social Services.	_____	_____
3.	The age range of children who fall under the Young Offenders Act is the same as the age range in the Child Welfare Act.	_____	_____
4.	The "Matters to be Considered" in the Child Welfare Act serve much the same purpose as the "Declaration of Principles"	_____	_____
5.	A youth who is over eighteen years of age could still be charged under the Young Offenders Act, if the offense occurred before his/her eighteenth birthday.	_____	_____
6.	The "Matters To Be Considered" in the Child Welfare Act and the "Declaration of Principles" in the Young Offenders Act, reflect the same principles and priorities	_____	_____

Answers:

1. True — The child welfare worker can testify as a parent if Alberta Social Services has the youth in their custody.

2. False — The child welfare worker is considered a parent only if Alberta Social Services has the child in their care and custody (i.e.: if the Department is involved with the child under a support agreement or supervision order the child welfare worker would not be considered a parent, but rather a concerned professional).

3. False — The age range for the Young Offenders Act is 12 to 17 years. The age range for the Child Welfare Act is 0 to 17 years.

4. True — Both Section 2 of the Child Welfare Act and Section 3 of the Young Offenders Act are embodied in the act and, therefore, must be reflected in court decisions and practice.

5. True

6. False — The principles contained in the Matters to be Considered are much different than those in the Young Offenders Act. The Child Welfare Act stresses principles such as:

   - integrity of the family unit
   - protection of the child
   - use of family and community resources
   - the need to respect the child's sense of time
   - the need to respect the cultural, religious, and familial heritage of the child.
   - involvement of the child and family in decision making
   - the principle of least intrusion

On the other hand the Young Offenders Act reflects principles around:

- protection of society
- accountability of the child for his/her behavior
- the need for court diversion when feasible
- least intrusion
- the legal rights of the child
- the responsibility of the parents to look after the child.

As you can see from a comparison of these principles there are some similarities (e.g.: emphasis on least intrusion and the need to respect the responsibilities of the family unit); however there are also some major differences (e.g.: the child welfare act doesn't deal with protection of society, but focuses more on protection of the child. The Young Offenders Act doesn't deal with the issue of utilizing resources in the community in which the child lives except through court diversion measures, etc).

REFERENCES

1. The Young Offenders Act. Sections 1, 2 and 3.

2. Alberta Social Services
   Program Manual - Child Welfare In Progress
   Chapter 12.

SECTION II - PRE COURT PROCEEDINGS

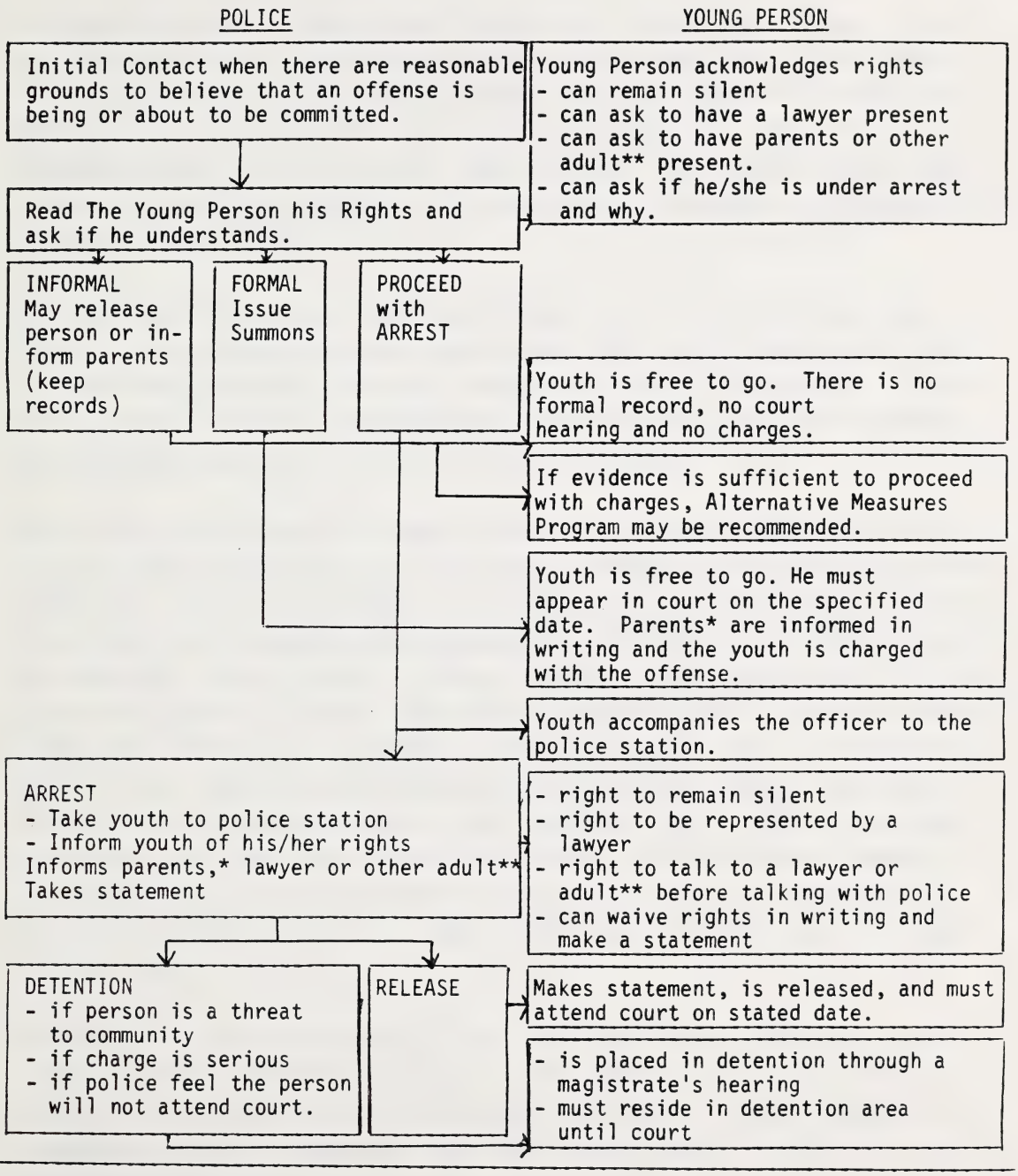
Pre-court proceedings are the activities that take place before formal charges are laid in youth court. These proceedings serve a number of purposes. First they ensure that the youth knows what his rights are and has the opportunity to exercise these rights. Secondly they provide the crown prosecutor with the opportunity to explore and implement court diversion programs which allow the enforcement personnel to hold the youth accountable for his actions while, at the same time, avoiding the need for a criminal record. Thirdly, these procedures give parents and other people responsible for the care of the youth the opportunity to become involved in the case.

In this section we will describe the key pre court proceedings that may impact upon your role as a child welfare worker. This includes:

- the role of the police
- the rights of the young person
- detention and bail hearings
- the use of Alternative Measures programs.

The Role of The Police And The Rights of The Young Person

The following diagram outlines the role of the police in response to a complaint involving a young person. It also describes the youth's rights in relation to the actions that the police may take:


POLICE
YOUNG PERSON
Initial Contact when there are reasonable grounds to believe that an offense is being or about to be committed.
Young Person acknowledges rights
- can remain silent
- can ask to have a lawyer present
- can ask to have parents or other adult** present.
- can ask if he/she is under arrest and why.
Read The Young Person his Rights and ask if he understands.
INFORMAL May release person or inform parents (keep records)
FORMAL Issue Summons
PROCEED with ARREST
Youth is free to go. There is no formal record, no court hearing and no charges.
If evidence is sufficient to proceed with charges, Alternative Measures Program may be recommended.
Youth is free to go. He must appear in court on the specified date. Parents* are informed in writing and the youth is charged with the offense.
Youth accompanies the officer to the police station.
ARREST
- Take youth to police station
- Inform youth of his/her rights
Informs parents,* lawyer or other adult**
Takes statement
- right to remain silent
- right to be represented by a lawyer
- right to talk to a lawyer or adult** before talking with police
- can waive rights in writing and make a statement
DETENTION
- if person is a threat to community
- if charge is serious
- if police feel the person will not attend court.
RELEASE
Makes statement, is released, and must attend court on stated date.
- is placed in detention through a magistrate's hearing
- must reside in detention area until court

---

* If the Department has custody of the child this would include the child welfare worker.

** In addition to the child welfare worker this could include care givers such as foster parents, group home supervisors, etc.

If the police feel it appropriate, a child under twelve years of age, and who is believed to have committed an offense or has been party to an offense, would be referred to child welfare authorities under Section 4 of the Child Welfare Act. Normal intake procedures would apply in these cases. The alleged offense is only one factor that you, as a child welfare worker would consider in assessing whether or not the child is in need of protection and the appropriate services.

In some cases the police, the crown prosecutor or Youth Court may wish to divert a young person from the court process after having assessed the youth as requiring protective services rather than criminal adjudication. While this is not expected to occur frequently, such referrals should be handled as you would any report of a child in need of protection.

When a youth is arrested or placed in detention the police, under Section 9(1) of the Young Offenders Act, are required to provide a parent with notice of arrest and place of detention. If the youth is in the custody of Alberta Social Services the people who have cutody of the child at the point of arrest are notified. Usually this is a foster parent or group home staff. If the police are unable to contact these people, they will try to contact another responsible adult (eg. a neighbour, crisis unit staff, etc.). Because the police often aren't aware of the youth's child welfare status at the time of arrest, the child welfare worker is not contacted. Once contacted the foster parent or group home staff should then notify the child welfare worker and forward a copy of the written court notice. It is then your responsibility, as the child welfare worker, to send the Regional Children's Guardian a copy of this notice.

Notifications of court hearings, other than the initial detention hearing, follow a slightly different process. In this instance the youth's biological parents are notified, and if the child is under a custody agreement or guardianship order or agreement, the child welfare worker is also sent a copy of the review notice.

Section In The Act	
9(2)	Police shall provide a notice of the summons, appearance notice, promise to appear or recognizance.
10(1)	A parent/guardian may be ordered by the court to attend proceedings. Failure to appear without cause is considered contempt of court and an arrest warrant may be issued.
23(3)(4)	Court will cause a copy of a probation order to be given to a parent/guardian who is in attendance or who is not in attendance if the parent is taking an active interest.
28(11) 32(5)	Parent/guardian shall receive notice of a court review of disposition.
29(1) or 28(3)	Parent/guardian shall receive notice of the Provincial Director's recommendation that a young person being held in continuous custody be released and placed on probation, giving reasons and recommended conditions of probation.
28(11)	Parent/guardian shall receive notice of the Provincial Director's application for court review of a continuous custody disposition based on his recommendation for release to probation.

Detention Hearing

If the police believe that the youth is a threat to the community, or that the child may not attend court if released on his own recognizance, or that the seriousness of the charge warrants, they may require the youth to attend a hearing before a youth court judge or other justice. This hearing would determine whether or not the young person should be held in detention prior to disposition. Under sections seven and eight of the Young Offenders Act the judge has the following options:

- place the youth in detention
- release the youth on his own recognizance
- place the youth in the care of a responsible person
- release the young person on bail

The final two options are particularly relevant to child welfare workers. For example, a youth could be released to your care or the care of a caregiver such as a foster parent or group home supervisor. The release would involve a written undertaking (form A.G. 3161) indicating a willingness to care for the youth, and to be responsible for the young person's attendance at the first court hearing. In such instances, you should be prepared to advise the judge of any circumstances affecting the probability of the youth's appearance at the court hearing. You should also amend clause number 2 of the form to read that you will make "reasonable efforts to ensure the attendance" of the youth, rather than agree to the present wording of "shall be responsible for the attendance" of the youth. This amendment has been agreed upon by the Alberta Attorney General's Department and Alberta Social Services. Under no circumstances should you assure the court verbally or in writing that the youth will be present at the hearing.

With respect to the last option, an interim release on bail, no departmental funds have been allocated to provide bail for children under care. If however you feel that, due to exceptional circumstances, the Department should consider providing bail, consult with your district office manager.

Alternative Measures

The Alternative Measures Program is a pre-charge, pre-court program in which the Crown Counsel is the gatekeeper. The program is not a substitute for the traditional exercise of police discretion. The police will make the initial recommendation to the Crown as to whether or not a young person should be admitted into the program. The police must supply the Crown Counsel with sufficient particulars of the offense to enable them to make an informed decision. The police must comply with the Young Offenders Act procedures, with respect to informing young persons of their rights to counsel, and must comply with the section dealing with procedures in taking statements. The Solicitor General administers the Alternative Measures Program.

Eligibility

Candidates for the program must be 12 to 17 years of age. They must not have any previous convictions under the Criminal Code of Canada and they must accept responsibility for their actions. Appropriate candidates should demonstrate sincere remorse. In all cases, the value of property or damage in the alleged offence may not exceed $1,000. Seven criminal offenses are approved for the program:

Type of Offense Considered in Determining Eligibility

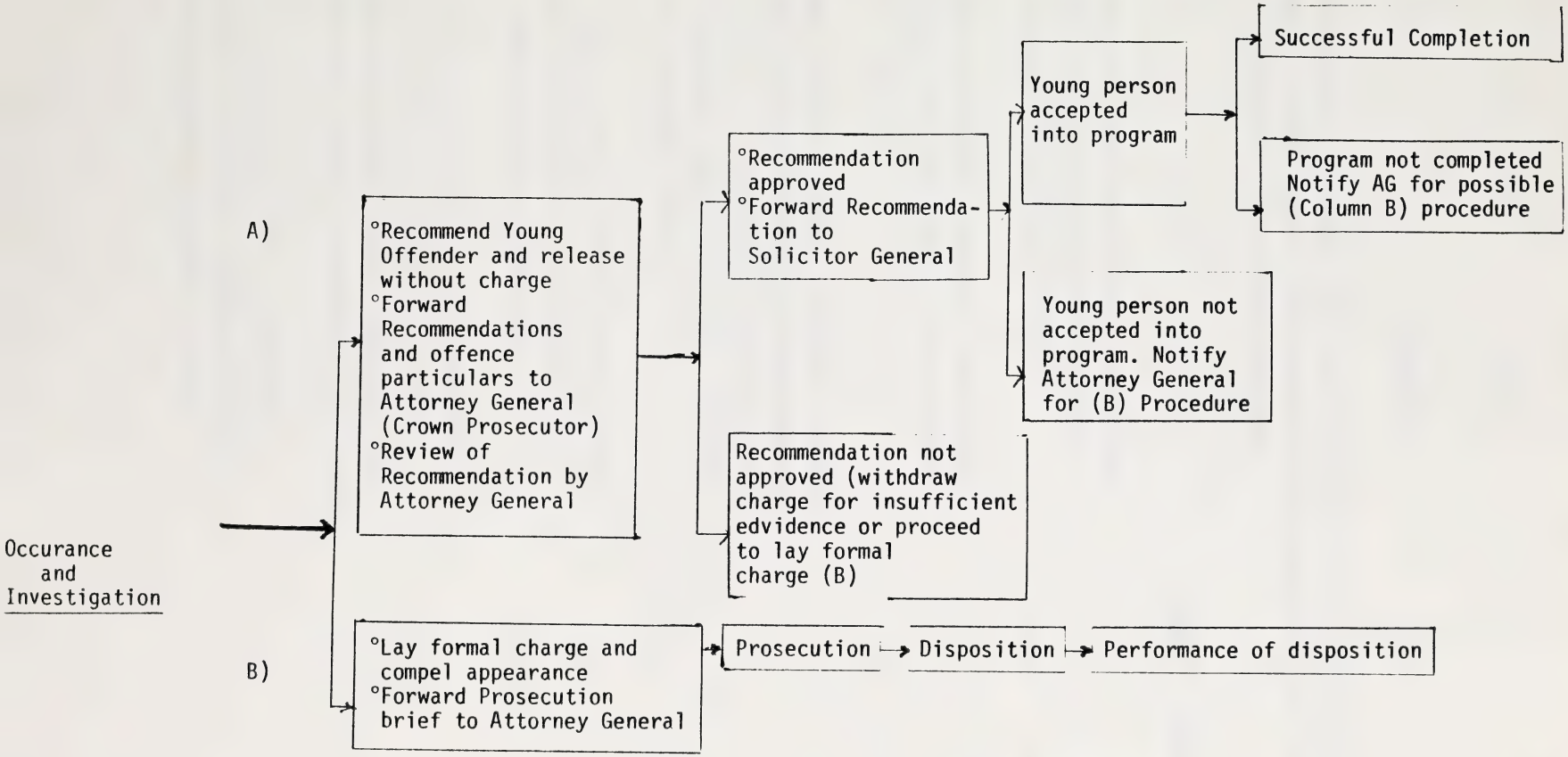
1. Break/enter into non-residential premises with intent to commit an indictable offense (should not involve violence and occurs only when goods taken do not exceed $1000.00).
2. Simple possession of cannabis or its products.
3. Theft under $1000.00.
4. Possession of stolen property.
5. Mischief and vandalism.
6. Causing a disturbance.
7. Joyriding.
8. Common Assault.
9. Fraud (by false pretenses) and fraudulently obtaining food and clothing.

10. Violation under the Liquor Control Act.
11. Violations against Section 78 of the Public Health Act.
12. Trespassing (Section 2 of the Petty Trespass Act and Section 17 of the Criminal Code).
13. Littering.

The attitude of the young offender is an important factor to be considered. Alternatives measures may involve an apology, community service, counselling, compensation or restitution agreements, other appropriate actions, or any combination. Community agencies can play an important role in administering the Alternative Measures Program.

It is not intended that the consequences under the alternate measures be more onerous than if young person went to court. Provincial policy stipulates a maximum of 30 hours of community service and a maximum fine of $200 compensation. No action under the Alternative Measures Program may last more than 3 months. All records of alternative measures will be destroyed or regarded as destroyed if there have been no further allegations or convictions two years from the date of the decision.

ALTERNATIVE MEASURES FLOWCHART


Occurance and Investigation
A)
°Recommend Young Offender and release without charge
°Forward Recommendations and offence particulars to Attorney General (Crown Prosecutor)
°Review of Recommendation by Attorney General
°Recommendation approved
°Forward Recommendation to Solicitor General
Young person accepted into program
Successful Completion
Program not completed Notify AG for possible (Column B) procedure
Young person not accepted into program. Notify Attorney General for (B) Procedure
Recommendation not approved (withdraw charge for insufficient edvidence or proceed to lay formal charge (B)
B)
°Lay formal charge and compel appearance
°Forward Prosecution brief to Attorney General
Prosecution
Disposition
Performance of disposition

Exercise

The following are a few questions you can answer to test your knowledge on this section of the manual. Try answering these questions and check your answers with those provided on the next page.

		True	False
1.	The police must ensure that a young person understands his rights prior to taking a statement or making an arrest.	_____	_____
2.	Prior to making a statement a young person has the right to contact a lawyer or talk to his parents.	_____	_____
3.	Both a director and the Children's Guardian under the Child Welfare Act, must receive notice for a young person under Temporary or Permanent Guardianship who is charged with a criminal offense.	_____	_____
4.	A predisposition detention hearing must be held by the senior police officer, prior to detaining the young person.	_____	_____
5.	Under Section 10 of the Young Offenders Act the Children's Guardian could be ordered to attend a court hearing if the youth was subject to permanent guardianship.	_____	_____
6.	If a young person fails to complete an Alternative Measures program, charges can be laid against the youth in court.	_____	_____

Answer Sheet

1. True — They not only have to read the young person his rights, they must also take reasonable measures to ensure the young person understands his rights.

2. True — The young person also has the right to make a statement without consulting with a lawyer and/or his parents.

3. True — They are considered "parents" of the child for the purpose of the Young Offenders Act.

4. False — The predisposition hearing is convened by a Youth Court judge or another justice.

5. True — As the guardian of the child the Children's Guardian would be included by this section, however the child welfare worker would represent him in almost all occasions.

6. True — If a reasonable effort have been made by the youth, however, the crown can also terminate the alternative measures program without proceeding with charges.

REFERENCES

1. The Young Offenders Act. Sections 4 - 12.

2. Alberta Social Services
   Program Manual - Child Welfare In Progress
   Chapter 12.

SECTION III - COURT PROCEEDINGS

In this section we will describe the roles of the various professionals who may be involved in a youth court hearing, some issues and events that may arise during the hearing, and the various dispositions possible under the Young Offenders Act.

Legal Representation

A young person has the right to retain and instruct a lawyer without delay, at any stage of proceedings against him. As was mentioned earlier, the young person is advised of this right: on arrest, at a judicial interim release hearing (need for detention), upon application of a transfer to Adult Court, at his trial, or at a review of disposition hearing. The following is a brief description of the ways in which a lawyer for the young person is appointed:

1. Hire His Own Lawyer	This can be done through commercial means, friends and or relatives, when the person can afford it (Alberta Social Services will not cover the costs of a privately appointed lawyer).
2. Legal Aid	The young person must apply to legal aid for assistance. Eligibility is based on income, expenses and seriousness of offense. (Alberta Social Services wards are automatically covered by legal aid when they request it).
3. Duty Counsel	For a first appearance, some courts have duty counsel to advise the young person of the nature of the offense and what plea to enter, and to ask for an adjournment so the young person can get his/her own lawyer. He also speaks for the young person on simple matters. Some rural courts do not have duty council

	present. This must be arranged in advance, usually through Legal Aid.
4. Court-Ordered Lawyers	If turned down by legal aid, the court will appoint a lawyer. The cost is assumed by Attorney General's Department.

Crown Counsel

Under the Young Offenders Act the Crown Council plays the following role:

The Crown Counsel reads the police report and determines if there is a valid and prosecutable case against the young person. The Crown Counsel is the person who will introduce evidence against the young person in court and tries to prove his guilt. At the end of the trial, if the young person is found guilty, the Crown Counsel will also recommend what the sentence should be.

If it is the young person's first appearance in court, and if a guilty plea is entered, the prosecutor might be a senior police officer. If it is a trial, the Crown Counsel will be the lawyer whose job is to present evidence against the accused person.

If, upon reading the police report, the Crown Counsel feels there is a valid case, then:

Crown Counsel	Circumstances
1. May decide no further action need be taken, even if there is sufficient evidence to proceed.	This is done only under very special circumstances.
2. May send a letter of warning to the young person and his/her parents and take no further action.	This is done in the case of very minor crimes, or if it is the first offense and there are extenuating circumstances.
3. May ask the probation officer to prepare a pre-court enquiry. This report is based on an interview with the young person and his or her parents. The report includes facts and circumstances of the alleged crime, the young person's special situation and attitude. It recommends whether the case should proceed to court or be dealt with by alternative measures. If alternative measures are recommended, a specific program is outlined in the report.	No information in this report can be used against the accused at a later time. The Young Offenders Act adds safeguards for the young person by specifying the circumstances under which alternative measures can be used.

In reference to Alternative Measures Programs, the young person must consent, and admit and he has a right to legal counsel. Parents' consent is not required.

The Judge

The judge is the person who directs the proceedings in the court room, listens to the evidence from the crown prosecutor and the defense, and decides:

1. Whether the young person is guilty or not guilty.

2. If guilty, the judge will decide what the disposition will be. The judge is also there to make sure that the young person gets a fair trial, that the young person's point of view is presented, and that his rights are protected.

The Clerk

The clerk keeps all records and files.

Probation Officer (Solicitor General)

The probation officer is responsible for preparing reports which help the judge decide on the young person's disposition and assess any progress made. The probation officer does not represent the young person; his duty is to the court.

Child Welfare Worker (Social Services)

If the young person has been involved with Social Services, the social worker may be in court. When the judge is considering a disposition, he or she may call the child welfare worker (if the youth has dual status) to give information on matters such as the youth's age, maturity, present and post placement history, case plan, and recommendations as to whether the child could function in his current placement or would need to be placed in a Young Offenders Center. Child welfare workers must obtain the proper information release before providing this information (this will be described in more detail later). The child welfare worker may be in court to act as the legal guardian or to participate as required under the Child Welfare Act.

Others

Youth Court is open to the public. This means that anyone, including the media, is allowed to sit in court and watch the proceedings. While the name of the young person cannot be published, names of other adults can. The judge has the power to warn the press not to publish information that may be harmful to the young person and to ask anyone in the court to leave if he/she feels it may jeopardize the confidentiality of the young person (for example, a person who may go to the same school).

Issues And Events That May Take Place During The Youth Court Proceedings

° First Appearance

At the first appearance in Youth Court, the young person is asked to enter a plea of "guilty" or "not guilty." Before accepting a plea, the judge must be sure that the young person understands the charge, and must explain to the young person that he or she may plead "guilty" or "not guilty" to the charge. If the court is not satisfied that the young person understands the charge, the court will direct that a "not guilty" plea be entered. If a "guilty" plea is entered and the Youth Court judge is satisfied that the facts support a charge, a disposition or sentence may be given right away, or there may be an adjournment so that a

pre-disposition report can be prepared by a probation officer. A pre-disposition report is always required before a custody disposition is given. If a "not guilty" plea is entered, there will generally be an adjournment and a date for a trial will be set.

° Transfer to Ordinary (Adult) Court

Depending on the nature and seriousness of the alleged offense, the Crown Counsel may decide to apply for a transfer to ordinary (adult) court. Transfer to adult court is only possible if the young person is 14 years of age or older. In these situations, there is a statutory requirement for a written predisposition report, and an absolute right to counsel. This option is only used where the offense is serious and in circumstances where it is felt that the transfer is in the interest of society, having regard to the needs of the young person. The young person may also apply for a transfer. Normally, transfer to adult court is infrequently used.

° Pre-Disposition Report

A pre-disposition report is an assessment of the young person's age, behavior, attitude, previous contact with the law, experience in Alternative Measures Programs, school records, and relationship with parents. A review of programs and placements in which the youth had participated prior to the offense (including any social services programs) is made available to the court as part of the pre-disposition report.

The probation officer preparing the report will interview the young person's parents or guardians and the victim (where there is an identifiable victim). Under most circumstances copies of the report must be made available to the young person, parents, child welfare workers (if the youth is under the custody of Alberta Social Services) or legal counsel. This report isn't automatically forwarded to you but instead is available upon request to the probation officer.

If the judge considers the young person to be suffering from physical or mental illness, the judge can ask for a medical, psychological or psychiatric assessment with the young person and prosecutor's consent. This is not part of the pre-disposition report and is reported separately.

Disclosure of Information By the Child Welfare Worker

When you are approached by a probation officer for information on a child who has guardianship status or has had child welfare status, in order to prepare a pre-disposition report, you should make every effort to share information in a cooperative manner consistent with the best interest of the child. However, prior to providing any information, you must request a consent of the Minister or his/her designate (the Minister has delegated this authority to the Regional Directors and, some regional administrators responsible for the delivery of child welfare services). Upon approval, you may provide information regarding:

1. age;
2. maturity;
3. character;
4. behavior and attitude;
5. willingness to make amends;
6. history of services provided by a director under the Child Welfare Act;
7. response of the young person to previous sentences and dispositions, if applicable and to services rendered to him/her; and
8. such additional information as might assist the court in making a disposition consistent with the individual needs and best interests of the young person.

In the case of support or custody agreements, the probation officer should contact the parents of the child first. If additional information is required, you may be contacted.

You should provide information verbally or in writing, and the probation officer should not be allowed to read the file. When information is

provided, you should note it on the child welfare file. Furthermore, good judgement, discretion, and relevance to the current situation should be considered when releasing information to sources outside of the department.

Since a copy of the predisposition report is given to the young person and his parent/guardian, you should be aware that the information provided will become known to both the young person and his parent(s) (Section 14(5) Y.O.A.).

When appearing at the Judicial Interim Hearing (this is the first hearing for the youth, usually a detention hearing) with a child, you may release the child's name, birth date, child welfare worker's relationship to the child, status, address, type of placement and the probability of the child attending the first court appearance, without a formal release.

You should also anticipate being served with a notice pursuant to Section 9, as a guardian and/or may anticipate making representations to the Court on behalf of the child. Under such circumstances you must get Ministerial consent. In addition, where it can reasonably be expected that a staff member of an agency providing services to the child may also be called to give information at a hearing, you should request that person's name and agency be added to the consent to give evidence at the hearing. Please check with your supervisor for a description of the approval procedure as it varies from region to region.

When working with foster parents or other care givers they should be advised to refer all requests for information from probation officers to you. You should also advise them that they can, however, provide information on the youth to police officers when they are investigating an offense that involves the youth. If the foster parent feels uncomfortable or unsure about the appropriateness of releasing certain types of information, advise them to refer the officer to you.

NOTE: In some instances, the probation officer or other delegate of the Provincial Director of Young Offender Programs may request information on

a child following court disposition, for the purpose of developing a rehabilitation plan. Prior to providing any information, the child welfare worker shall request a consent of the Minister (or designate) and, upon approval, may provide such information as may be necessary in establishing a rehabilitation plan or program, consistent with the individual needs of the child and the best interests of the child and his/her family.

In requesting Ministerial consent to disclose information, the request must stipulate the person to whom the information will be given, and the purpose of the disclosure, for example:

1. to the probation officer (name), for the preparation of a predisposition report;

2. to the probation officer (name) or other person (name/title), for the development of a rehabilitation plan/program;

3. to the court, to give evidence at the hearing.

Since the court may, under specific conditions, order that a medical or psychological report be prepared for the court (Section 13(1)), and since the author of the report may be cross-examined (Section 13(5)), and since a copy of the report shall be given to the young person and his parents except under specific conditions (Section 13(4)(6)), any decision to provide such information from a child welfare file, upon request by a probation officer shall require:

1. consultation with the author, if available;
2. consent of the author, where possible; and
3. consent of the Minister (or designate).

Dispositions

When a youth court finds a young person guilty of an offense, it will consider any pre-disposition report and any other relevant information before the court, before making any one of the following dispositions:

DISPOSITION	OUTCOME
1. Absolute discharge.	Free to go (and the youth has no record).
2. Fine of not more than $1,000.	Time and terms to be fixed by court.
3. Order to pay for specific damages of damaged property, or goods or injury to another person or person's property.	Time and terms to be fixed by court for specific repair and restitution. Not general damages.
4. Order to make restitution to any person of property obtained by the young person as a result of the offense.	Time and terms to be fixed by court.
5. If any property obtained as a result of the offense was sold to an innocent purchaser and then returned to the original owner by way of restitution, the court may order the young person to pay the purchaser.	Time and terms to be determined by court. The amount will not exceed the amount paid by the purchaser.
6. Community service order which would require a specified amount of work for the community. Not to exceed 100 hours for provincial offenses and	Earns credits for work performed as determined by specific program. This disposition needs the consent of the offended party.

240 hours for federal offenses, and to be completed within 12 months.	That person also has the right to make representation in court.
7. Order of prohibition, seizure or forfeiture.	Stolen property could be seized.
8. Treatment order, if a medical or psychological report recommends that a young person undergo treatment in an appropriate facility. Such orders require the consent of the youth, parents and the resource providing the treatment.	The youth is placed in a designated facility in order to receive the necessary treatment, e.g., report to Sex Offender Counselling Program.
9. Probation order for up to two years.	The youth is advised of specific conditions (eg: participation in ADAC counselling or the requirement to live at specific residence) and must report to a Probation Officer.
10. Commit the young person to custody.	The youth is placed in an Open or Secure Custody Facility for a specific period of time, for example, Edmonton Youth Development Centre or group home.

SUMMARY

COURT	YOUNG PERSON	CHILD WELFARE WORKER	FOSTER PARENTS (OR CAREGIVERS)
Crown Counsel reviews case and decides whether it goes to Court or not	° may be released under very special circumstances ° may give information for pre court inquiry ° May participate in Alternative Measures Program	° may act as a concerned professional ° may act as legal guardian	° may be contacted to provide information ° receives notice of arrest and hearings ° forewards notice to the child welfare worker
1st Appearance If guilty plea and all facts were presented, may give disposition May request transfer to adult court May request predisposition medical, psychological or psychiatric reports.	Enters plea: guilty or not guilty Could receive sentence, if plea of guilty was entered Transfer only if over 14 years and alleged offense is serious May be released or held in custody for examination. Detention cannot exceed 30 days.	° may act as a concerned professional ° may act as legal guardian May need to provide information to courts (eg. psychological assessment and file information). Consent to release information required.	° may act as a concerned professional ° receives notice of hearing and forewards to the child welfare worker
Trial prosecutor presents witnesses and evidence to prove guilt	Defense presents evidence to prove innocence	° may be called to testify	° may be called to testify
Disposition - guilty or not	° if innocent released and all records destroyed ° if guilty, sentenced	° may act as concerned professional ° may be asked to speak to sentencing	° may act as a concerned professional

COMMONLY ASKED QUESTIONS

1. Can a child welfare worker release information without consent to a Youth Court Judge or Crown Counsel?

Answer:

° Youth Court Judge

NO. Court is open and under section 91(2)(j) of the Child Welfare Act we need to have the Minister's consent to release any, except basic, information to an open court.

° Crown Counsel

YES. Section 91(2)(d) of the Child Welfare Act states that we can release information to Crown Counsel without the consent of the Minister.

2. Can a child welfare worker be appointed as a probation officer under the Young Offenders Act?

Answer:

NO. Solicitor General staff are normally assigned this responsibility. The child welfare worker acting as a concerned professional or a guardian would be placed in a conflict of interest situation by acting as a probation officer.

3. Can Native Counsellors be appointed as probation officers under the Young Offenders Act?

Answer:

YES. Probation officers can delegate authority to Native counsellors to supervise the probation orders of Native young offenders. This ensures that cultural factors will be considered within the supervision.

4. Can the Department pay the fine levied through the Young Offenders Act against a child under the care of Alberta Social Services.

Answer:

No. The youth is responsible for payment of the fine. Payment can be worked out jointly by the court, youth and social worker. This may involve giving the young person enough time to get a job to pay back the fine or through arranging for a community service option.

Exercise

To test your knowledge of this section of the self study manual please answer the following questions and then check you answers with those on the following page:

1. A lawyer can be obtained for a young person charged under the Young Offenders Act through:

   a. contacting Duty Council
   b. the Office of the Children's Guardian
   c. Legal Aid
   d. requesting the Court to appoint a lawyer
   e. requesting a Regional Director to appoint a lawyer.

2. The court _____ keeps all court records and files.

3. If the young person is _____ years of age or older counsel can apply to have the case heard in adult court.

4. When appearing at a judicial Interim Hearing with a child, a child welfare worker may release _____, _____, _____, _____, _____, _____, _____, without a formal Ministerial release of information.

5. When requesting a consent to disclose information the consent must stipulate the _____ and _____.

6. The _____ in each region has been delegated by the Minister the authority to release child welfare information under Section 91(2)(j) of the Child Welfare Act.

Answers

1. a, c, d. (legal representation cannot be provided by Alberta Social Services because they do not have a mandate to administer the Young Offenders Act).

2. Clerk

3. 14

4. child's name, birthdate, address, child welfare status, child welfare workers relationship to the child, type of placement and the probability of the child attending the first court hearing.

5. person to whom the information will be released and the purpose of the release.

6. Regional Director (this may also be delegated by the Minister to other people in the region).

REFERENCES

1. The Young Offenders Act. Section 13 - 26.

2. Alberta Social Services
   Program Manual - Child Welfare In Progress
   Chapter 12.

SECTION IV - POST COURT PROCEEDINGS

This section of the self study manual addresses proceedings that come into effect once the young person's guilt has been determined and a disposition established. It addresses:

- Appeals of a court decision
- Reviews of a disposition
- Probation orders
- Destruction of young offender records

In addition this section of the manual will describe Alberta Social Service policies and expectations that may impact upon your role, if you have a young person on your caseload who is under the guardianship of Alberta Social Services and who is also under a probation or custody disposition with respect to the Young Offenders Act.

Appeals

Young persons have the legal right to appeal a youth court judge's decision to a higher court. The appeal court may alter the disposition or overturn the original decision.

In turn, the prosecutor has the right to appeal if he/she feels that the disposition or sentence is not appropriate.

Review Of Disposition

While a youth is in custody, a director, the young person, a parent, the Attorney General or his/her agent may ask for a review of a disposition.

The Court, upon being satisfied that there are grounds for review, will consider the following factors:

a. whether the young person has made sufficient progress;
b. whether circumstances that led to the committal to custody have changed;
c. any new services that are now available that were not available at the time of dispositon; or
d. any other grounds the youth court may consider appropriate.

Summarized from Section 28(4) Y.O.A.

Youth Court can modify a sentence if warranted. No review of a disposition can occur until proceedings under the appeal are completed.

Automatic and Optional Reviews for Custody Dispositions

DISPOSITION	REVIEW
When a young person has been committed to custody exceeding one year,	review is automatic after 12 months.
When custody is 6 - 12 months,	a review of disposition can be made if Section 28(4)(a)(b)(c) and (d) applies.
When custody is 0 - 6 months,	a review application can be made, with the consent of a youth court judge.

Early Release

The Young Offenders Act provides a means for the Solicitor General Young Offender Branch to release a young person from custody and place him on probation without having a court hearing. Notice of the recommendation is filed in court or given to the young person, parents (this includes the child welfare worker for youths under T.G.O., P.G.O. or P.G.A.), or the Attorney General (or agent) and if none of the parties make application for a review of the recommendation, the judge may order the probation.

If the judge does not make the order, the Solicitor General Young Offender Branch can seek a court hearing for review.

Review of Non-Custodial Dispositions

A review of a young person's disposition may be held even if that young person is not in custody. The application can be submitted for positive or negative reasons. The application can be submitted to the Youth Court by the young person, a parent, Attorney General (or agent) or Solicitor General Young Offender Program at any time after the date of disposition. The application for review is made on the following grounds:

1. that the circumstances that led to the disposition have changed materially;
2. that the young person is unable to comply with or is having serious difficulty trying to comply with the terms of the disposition;
3. that the terms are adversely affecting the opportunities available to the young person to obtain services, education or employment;
4. on any other grounds the youth court considers appropriate.

The court may confirm, vary or terminate the disposition, or make a new disposition.

Summarized from Section 32(2) Y.O.A.

NOTE: In none of the preceding types of reviews may the youth court increase the severity of the original disposition, except with the

consent of the young person, or to extend the time for completion of personal or community services where a young person needs more time to comply.

If the youth is under a temporary or permanent guardianship order or a permanent guardianship agreement, you as the representative of the Children's Guardian, have the right to request any of the preceding reviews. The request is usually made to the youth's probation officer who makes the necessary arrangements. If the youth is under a custody agreement with the department, the guardians of the youth (eg: his biological parents) are responsible for initiating a review.

PROBATION

The Young Offenders Act empowers the court to sentence a young offender to a period of probation not to exceed two years. The Probation Officer is normally an employee of a community correctional office within Alberta Solicitor General. Probation may be combined with a number of other dispositions such as community service or restitution provided the combined duration of dispositions do not exceed two years.

Three Conditions Must Appear In Any Probation Order:

- the young person bound by the probation order will keep the peace and be of good behavior;
- the young person will appear before the youth court when required by the court to do so;
- the young person will notify the community corrections office of any changes to his/her address, place of employment, training or education.

PROBATION ORDERS MAY ALSO INDICATE THAT THE YOUNG PERSON MUST:

- report to a probation officer;
- remain in a territorial jurisdiction;
- make reasonable efforts to obtain and maintain suitable employment;

- attend school or other training;
- reside with a parent or other adult the court considers appropriate;
- comply with other reasonable conditions (for example, restrictions on driving a motor vehicle, alcohol/drug use, counselling or curfew requirements).

Custody

A young person who has committed a serious offense or cannot comply with the terms of the probation may receive a custody disposition. This basically means the young person must live where they are placed by Alberta Solicitor General.

Committal To And Release From Custody

A committal to custody means that the young offender will be admitted to a designated residential facility and his access to the community may be restricted. The Court will specify that custody will be either open or secure. An open custodial facility might be a group home, young offender residential facility, detention centre, correctional institution, or wilderness camp. A secure custodial facility is a facility specified by the Lieutenant Governor in Council for the containment or restraint of young persons. Secure custody is used only if the offender is fourteen years or over (with some exceptions) and for offenses that could result in a sentence of five years or more for an adult. The difference between open and secure custody is the degree of supervision and confinement. Open custody facilities are unlocked facilities in which the youth may participate in community programs such as school, work, or recreational activities. Secure facilities have higher levels of supervision, and usually (but not always) are locked facilities. In a secure facility the youth would have very limited access to community programs.

An important principle which the Young Offenders Act embodies is that the Youth Court which issued the custody order will retain jurisdiction over the young offender until the custodial disposition (or any other disposition) is completed. However, the Young Offenders Act also recognizes that there must be some built-in flexibility to allow the Provincial Young Offender Director

to plan and implement effective programs. Therefore, once the Youth Court has made a custody order specifying the level of custody, it leaves the decision regarding which facility would be most appropriate to the Provincial Young Offender Director. The Provincial Young Offender Director is able to move offenders between institutions and programs within the same level of custody, authorize transfer from open to secure custody facility for up to fifteen days, for escape or serious misconduct, and authorize temporary release to the community for a period of up to fifteen days, on his/her own initiative. In addition, the Director upon approval of the court, is able to transfer a youth to an adult correctional facility when the youth becomes eighteen years old, or release a youth from custody to probation.

The Provincial Young Offender Director may authorize two types of temporary release from custody:

- a temporary leave of absence up to a maximum of fifteen days for medical or humanitarian reasons, or to assist in the re-integration of the young offender into the community;

- a day release so the young person can attend school or training, continue employment or take part in a self-improvement program.

Access To Young Offenders Files

If you need to access information on the youth's YOA file this can be accomplished through contacting the youth's probation officer. The probation officer can release the information to you with the approval of his or her supervisor. The process usually takes only a few minutes and can be conducted over the phone. The Alberta Solicitor General's Young Offender Files will normally contain all the information that you require. If you need access to the youth's court records, and this information is not on the Alberta Solicitor General's Young Offender Files, this can be arranged through contacting the Court Administrator in writing. He or she, with the signature of a Youth Court Judge, will release this information to you. Only in very rare occasions is there a need to access court records directly through the Youth Court.

Child Welfare: Guardianship

You will remain very involved and active with a young person who has a guardianship order or agreement during his custody placement, and provide appropriate support and encouragement. The following are some guidelines:

a. The child welfare caseplan will be influenced by the disposition, the recommendation given by Youth Court and the caseplan developed by the custodial facility. As a child welfare worker you should work closely with the custodial facility, the young person and the parents in developing the new caseplan.

b. The custodial facility will consider you as an important part of the team which will work toward the goals established to facilitate the young person's rehabilitation and placement after custody.

c. Direct caregivers must be provided with as much history and background information regarding the young person and his family as is necessary to enable them to provide appropriate care. There should be an ongoing sharing of information with direct caregivers (eg: foster parents, group home staff). (Refer to Disclosure of Information, page 40 to 42).

d. Institutional Directors, group home supervisors or Home Operations are not to be delegated guardianship authority. For children who are under guardianship orders or agreements, this authority still remains with Alberta Social Services.

e. Where appropriate, you must remain in contact with the young person's parents on an ongoing basis and inform them immediately of any significant happenings, illness or injury to the young person. It is expected that the Alberta Solicitor General will contact you and not the parents to advise of significant happenings (eg: illness or injury) in cases where a guardianship order or agreement exists.

f. The number of contacts will be dictated by the circumstances of the case; however, at least one contact per month must occur and be recorded on Contact Notes (SSCH 72). You must have face-to-face contact with the young person at least once every three months.

g. A Review of Child's Progress (SSCH 72A) must be completed by you every three months.

g. In any custody placement, it is important to consider the following:

i. Clothing and Personal Belongings

- The youth should have adequate clothing upon admission; thereafter, the Alberta Solicitor General will be expected to maintain adequate clothing and order new items as required.

- If the parents wish to have clothing accompany the person or wish to arrange to purchase clothing, this should be encouraged.

ii. Medical and Immunization Records

- It is your responsibility to make appropriate arrangements to transfer the young person's medical and immunization records where necessary.

iii. Alberta Health Care Insurance

- It is your responsibility to ensure that an Alberta Health Care Card accompanies the young person, if it is available. If it is not available, the Alberta Health Care number should be made available to the caregiver.

iv. Maintenance Costs

- All maintenance costs are the responsibility of Alberta Solicitor General while a youth is in custody.

NOTE: In all cases, you must update CWIS immediately following any custody placement.

Records

All Young Offender records are destroyed when:

1. the young offender is acquitted and all proceedings in respect to an appeal have been completed or the limitation of action has expired;

2. charges are withdrawn; or

3. no action for prosecution has been taken for a period of three months.

In those cases where a young offender has been convicted, destruction of records is required when a young person has not been charged with, or found guilty of an offense as a young person or adult:

a. during the five years after all dispositions have been completed by the young person;
b. where a young person, after becoming an adult, has been granted a pardon under the Criminal Record Act.

The calculation of applicable time limits for retention of records depends upon whether further changes or proceedings have been taken under any federal statue on regulation, anywhere in Canada. If the young person has had no further contact with the law within the various time periods described, by law the records must be destroyed. On the other hand, if a young person is charged with another offense during the waiting period, his record could be used against him at a second trial.

Summarized from Section 45 Y.O.A.

COMMONLY ASKED QUESTIONS

1. Can child welfare workers provide community youth workers for young offenders who are to be discharged from a young offender setting?

Answer:

YES. Community youth workers can provide support services for released young offenders.

2. Must child welfare intervene in cases where a child is refusing to return home upon being discharged from a young offender setting?

Answer:

A child welfare worker must acknowledge and investigate the referral to determine if the parental home is appropriate, and perhaps provide support services for the released young offender.

3. What is child welfare's responsibility for a young offender who is being released from Solicitor General care and resides in another province?

Answer:

It is the Department's responsibility to assist the released individual to return to his/her home province. This service is to be coordinated through a crisis unit.

4. Are child welfare workers required to intervene when a child is being released from secure custody and may be a danger to himself/herself or others?

Answer:

In order for Alberta Social Services to pursue a secure treatment certificate, or order, an investigation must be completed, and it must determine and can be shown, that the three conditions outlined in Section 41(1) of the Child Welfare Act exist.

EXERCISE

To test your knowledge of this section please answer each of these questions and then compare your answers with those on the following page.

1. The four grounds for a review of a disposition are:

   A._____
   B._____
   C._____
   D._____

2. An automatic review of disposition must occur every _____ months.

3. An optional review of disposition can be made after _____ months of the order, providing it complies with the grounds for a review under Section 28 of the Young Offenders Act.

4. An _____ custody facility might be a group home, youth development center or wilderness camp. A _____ custody facility is a facility specified by the Lieutenant Governor In Council for the containment or restraint of young persons.

5. Two types of temporary release from custody are:

   A._____
   B._____

6. If you have a young person under guardianship in a Young Offender facility, what type of contact and documentation is required by Alberta Social Services?

7. If you have a child under guardianship on your caseload and he/she is in a Young Offender facility, what are the Departmental policies with respect to caseplanning?

ANSWERS

1. a) whether the young person has made sufficient progress.
   b) whether circumstances that lead to the disposition have altered.
   c) any new services that are now available that were not available at the time of the disposition.
   d) other grounds deemed appropriate by the Youth Court.

2. 12.

3. 6.

4. open, secure.

5. a) a temporary leave of up to 15 days.
   b) a day release.

6. You must contact the young person at least once a month and document this in your contact notes (SSCH 72). You must have face to face contact with the youth at least once every three months and complete a review of the child's progress (SSCH 72A).

7. ° the caseplan should reflect the disposition, the recommendations of Youth Court and the caseplan developed by the Alberta Solicitor General's Department.
   ° work closely with the custodial facility as a part of the team working towards the youth's rehabilitation and post custody placement.
   ° provide direct caregivers with the information they need regarding the youth's background and history on an ongoing basis.
   ° remain in contact with the young person's parents, where appropriate, and communicate any relevant information to them (i.e. significant happenings, illness or injuries).
   ° conduct progress reviews every three months.

REFERENCES

1. Young Offenders Act.

2. Alberta Young Offender Program (Pamphlets)
"Fine Option"
"An Overview of the Fine Option Program"
"An Overview of the Temporary Absence Program"
"An Overview of Community Programs"
"A Parent's Guide to Probation"
"Probation"
"Service and Compensation"
"Temporary Release"
"Alternative Measures"
"Pre-Trial Services"
Alberta Solicitor General
Correctional Services Division
10th Floor, 10365 - 97 Street
Edmonton, Alberta T5J 3W7

3. The Young Offenders Act, 1982
Highlights
Communications Division, Programs Branch
Solicitor General Canada

4. Outline of Provisions Under The Young Offenders Act (Alberta) S.A. 1984, 4-1
Legal Resource Centre
Faculty of Extension
University of Alberta
10049 - 81 Avenue
Edmonton, Alberta T6E 1W7

5. Child Welfare Status Children Under the Young Offenders Act
"Child Welfare In Progress" (Chapter 12, Program Manual, 1985)
Alberta Social Services

6. Key Features of the Young Offenders Act from "Youth Opportunity Action" (1982)
Central Toronto Youth Services
27 Carlton
Toronto, Ontario M5B 1L2

7. A Guide to the Young Offenders Act in B.C. (1984)
Justice Institute of B.C.
Legal Services Society
Ministry of Attorney General
Peoples Law School
Solicitor General, Canada

8. In Trouble with the Law - A Guide to the Young Offenders' Act (1984)
Canadian Foundation for Children and the Law, Inc.
Suite 105, 720 Spadina Avenue
Toronto, Ontario M5S 2T9

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